

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

Herman Hall, #91037-071,)	
)	C/A No.: 4:06-0240-MBS
Plaintiff,)	
)	
vs.)	
)	O R D E R
Michael Weaver, State Highway Trooper,)	
sued in his individual capacity,)	
)	
Defendants.)	
_____)	

Plaintiff Herman Hall is a federal inmate in custody of the Federal Bureau of Prisons. Plaintiff, appearing pro se, brought this action under 42 U.S.C. § 1983 against the state highway trooper who initiated the traffic stop that resulted in Plaintiff's federal conviction. Plaintiff asserts the traffic stop was motivated by racial animus and amounted to a denial of due process.

In accordance with 28 U.S.C. § 636(b) and Local Rule 73.02, D.S.C., this matter was referred to United States Magistrate Judge Thomas E. Rogers, III for pretrial handling. The Magistrate Judge filed a Report and Recommendation on May 5, 2006 in which he recommended that the case be summarily dismissed because the case is barred by Heck v. Humphrey, 512 U.S. 477 (1994). Because the within action is duplicative of a § 1983 complaint filed in 2002, and because Plaintiff was advised in the 2002 case that his claims were barred under Heck, the Magistrate Judge recommended that this case be deemed a "strike" for purposes of 28 U.S.C. § 1915(g). Plaintiff filed no response to the Report and Recommendation.

The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight. The responsibility for making a final determination remains with this court. Mathews v. Weber, 423 U.S. 261, 270 (1976). The court is charged with making a de novo

determination of any portions of the Report and Recommendation to which a specific objection is made. The court may accept, reject, or modify, in whole or in part, the recommendation made by the Magistrate Judge or may recommit the matter to the Magistrate Judge with instructions. 28 U.S.C. § 636(b)(1). In the absence of objections to the Report, this court is not required to give any explanation for adopting the recommendation. Camby v. Davis, 718 F.2d 198, 199 (4th Cir. 1983).

The court has thoroughly reviewed the record. The court concurs in the Report and Recommendation of the Magistrate Judge and incorporates it herein by reference. The case is dismissed without prejudice and without issuance and service of process. This case is deemed a “strike” for purposes of 28 U.S.C. § 1915(g).

IT IS SO ORDERED.

/s/ Margaret B. Seymour
United States District Judge

May 31, 2006

Columbia, South Carolina

NOTICE OF RIGHT TO APPEAL

Plaintiff is hereby notified that he has the right to appeal this order pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.